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## BILLS AND NOTES--INDORSEMENT "FOR DEPOSIT ONLY"-- EFFECT ON NEGOTIABILITY

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BILLS AND NOTES—INDORSEMENT “FOR DEPOSIT ONLY”—EFFECT ON NEGOTIABILITY—Defendant, in payment for goods purchased, drew two checks payable to *W* which *W* indorsed “pay to order of plaintiff bank for deposit only” and deposited with plaintiff. Plaintiff credited *W*’s account with the amount of the checks, which sum was immediately withdrawn. Defendant then stopped payment of the checks as *W* failed to deliver the goods purchased; and, since *W* was bankrupt, plaintiff sought to recover the amount of the checks from defendant. Defendant sought to assert a defense which was good against *W*, on the theory that plaintiff, as restrictive indorsee, was merely a trustee for *W* and not a holder in due course. *Held*, the trial court was correct in finding that plaintiff was a holder in due course. *Rubio Sav. Bank of Brighton v. Acme Farm Products Co.*, (Iowa 1949) 37 N.W. (2d) 16.

It has been settled in those states<sup>1</sup> which have adopted the Bank Collection

<sup>1</sup> For a list of the 18 states, see BEUTEL’S, BRANNAN, *NEGOTIABLE INSTRUMENTS LAW*, 6th ed., 24 (1938).

Code that an indorsement "for deposit only" is restrictive and passes no title to the indorsee.<sup>2</sup> A similar degree of certainty has not resulted from the adoption of the Uniform Negotiable Instruments Law, however, as the provisions<sup>3</sup> therein dealing with restrictive indorsements leave this question open.<sup>4</sup> In those states in which an indorsement "for deposit only" has been held restrictive,<sup>5</sup> it becomes important to determine whether one who takes under a restrictive indorsement can qualify as a holder in due course. Several courts have specifically answered this question in the negative.<sup>6</sup> This position has been strongly criticized,<sup>7</sup> however, and the special facts of particular cases have been seized upon to permit recovery, or the successful use of a defense, available only to a holder in due course, by a restrictive indorsee.<sup>8</sup> Other courts, in accord with the principal case, have held that an indorsement "for deposit only" is not restrictive.<sup>9</sup> These decisions eliminate the necessity of an inquiry into the indorsee's ability to qualify as a holder in due course, and it has been ably argued that this result is most consistent with the indorser's intent.<sup>10</sup> It is submitted that the serious consideration is not so much whether this particular indorsement is held restrictive or non-restrictive, but that the policy behind the N.I.L. which favors uniform results under the law applicable to negotiable instruments is not being effectuated in this area. It is doubtful that the goal of uniformity will be realized with respect to indorsements "for deposit only" until either the Bank Collection Code finds universal acceptance or the N.I.L. is clarified by amendment.

*Stephen A. Bryant, S.Ed.*

<sup>2</sup> Bank Collection Code, §4.

<sup>3</sup> N.I.L. §§36, 37 and 47.

<sup>4</sup> For a discussion of these provisions and cases involving indorsements "for deposit only," see 27 MICH. L. REV. 333 (1929); 37 MICH. L. REV. 473 (1939). On restrictive indorsements in general, see Chafee, "Remarks on Restrictive Indorsements," 58 HARV. L. REV. 1182 (1945). See also 52 YALE L.J. 890 (1943).

<sup>5</sup> The cases are collected in BEUTEL'S BRANNAN, NEGOTIABLE INSTRUMENTS LAW, 7th ed., 613 (1948).

<sup>6</sup> Gulbranson-Dickinson Co. v. Hopkins, 170 Wis. 326, 175 N.W. 93 (1919); Union Trust Co. v. Matthews, 258 Mich. 433, 242 N.W. 781 (1931); Fidelity and Deposit Co. of Md. v. Marion National Bank, 116 Ind. App. 453, 64 N.E. (2d) 583 (1946).

<sup>7</sup> BEUTEL'S BRANNAN, NEGOTIABLE INSTRUMENTS LAW, 7th ed., 615-618 (1948).

<sup>8</sup> Continental Nat. Bank v. Stirling, 65 Idaho 123, 140 P. (2d) 230 (1943); Atlantic City Nat. Bank v. Commercial Lumber Co., 107 N.J.L. 492, 155 A. 762 (1931).

<sup>9</sup> Midwest Nat. Bank and Trust Co. v. Niles and Watters Sav. Bank, 190 Iowa 752, 180 N.W. 880 (1921); Boston-Continental Nat. Bank v. Hub Fruit Co., 285 Mass. 187, 189 N.E. 89 (1934); People ex rel. Nelson v. Sheridan Trust and Savings Bank, 358 Ill. 290, 193 N.E. 186 (1934).

<sup>10</sup> 27 MICH. L. REV. 333 (1929).